IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 496 OF 2006.

New India Assurance Co.Ltd. Sangli. ... Appellant.

Versus.

1. Ms.Bhagyashri Dilip Suryavanshi
   Age 6 years, Occ.: Education.

2. Smt.Malan Dilip Suryavanshi,
   Age 28 years, Occ.: Household.

3. Sou.Nanubai Shankar Suryavanshi,
   Age 55 years, Occ.: Household.

   All residents of Manerajuri,
   now residing at Budhagaon,
   Taluka Miraj, Dist. Sangli.

4. Umar Mohaddin Sayyad,
   Age: 63, Occ.: Truck Driver,
   R/o. House No.112, Nalbhag,
   Martin Galli, Sangli.

5. Raghunath Dattajirao Chavan,
   Age: 55, Occ.: Transport,
   R/o. 360, Remand Home,
   Miraj Road, Sangli. ... Respondents.

Shri S.S.Vidyarthi i/by Shri S.M.Vidyarthi for the Appellant.

Shri Sudatta Patil for the Respondent Nos.1 and 2.

CORAM : ABHAY S.OKA, J.

DATED : 16th March, 2007.

ORAL JUDGMENT.:

1. Submissions of the learned Advocates appearing for the parties were heard on 7th February 2007. However, judgment was reserved as a report was called for regarding the procedure followed by the Tribunals in the State established under the Motor Vehicle Act, 1988

regarding the withdrawal of compensation amount. I will advert to the said aspect after dealing with the merits of the Appeal.

2. The Appellant is the Insurer of the vehicle involved in the accident. The 1st to 3rd Respondents are the Claimants in a claim petition filed under section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the said Act of 1988"). The 1st Respondent is the minor daughter of the deceased. The 2nd Respondent is the widow of the deceased and the 3rd Respondent is the mother of the deceased.

3. On 28th September 1996, in the afternoon, the deceased was proceeding on a bicycle towards Vasantdata Cotton Mill located at Kupwad, Sangli Road. When his bicycle came in front of a gate of a cotton mill, the truck owned by the 5th Respondent which was being driven by the 4th Respondent came in a fast speed and gave a dash to the bicycle from its rear side. As a result of the impact of the accident, the deceased died on the spot.

4. The learned Member of the Tribunal passed an award holding that the 1st to 3rd Respondents were entitled to compensation of Rs.3 lakhs inclusive of Rs.50,000/- paid on account of no-fault liability

together with interest thereon at the rate of 12% per annum from 2nd May 1997 till the realisation of the amount. Certain amount was ordered to be invested in the name of the 1st to 3rd Respondents, and withdrawal of certain amount was permitted.

5. In the present case, a leave was granted in favour of the Appellant under section 170 of the said Act of 1988. As stated earlier, the Appellant is the insurer of the Truck involved in the accident. Apart from denying allegations of negligence against the driver of the truck, a contention was raised by the Appellant that the 4th Respondent was not possessing a valid and effective driving licence at the time of the accident. It is the case of the Appellant that the compensation awarded is on the higher side. It is pointed out that the age of the deceased at the time of accident was 35 years and therefore, the multiplier of 15 adopted by the Tribunal was on the higher side. The learned Advocate appearing for the 1st and 2nd Respondents have supported the impugned Judgment and order. The office noting shows that the 4th Respondent has died and the other two Respondents are duly served.

6. I have considered the submissions made by the Advocates appearing for the parties. The 1st to 3rd Respondents examined one Dattatraya Patil who was

accompanying the deceased Dilip at the time of accident on his own bicycle. He described the manner in which the accident took place. The Tribunal has referred to the F.I.R. and the spot panchanama. The driver of the Truck did not step into the witness box. After considering the evidence on record, the learned member of the Tribunal has accepted the version of the eye witness Dattatraya Patil. The bicycle of the deceased was ahead of him at the time of accident. However, the defence of the Appellant was that at the time of accident, the deceased was trying to cross the road in front of the truck. However, the driver of the truck has not been examined. In fact the learned Member of the Tribunal has rightly drawn adverse inference against the driver. The Appellant made no efforts to examine the driver. I find no fault with the finding of the Tribunal that the accident took place due to the negligence on the part of the driver of the Truck.

7. The Tribunal found that the Appellant has not discharged the burden to prove that there was a breach of the terms and conditions of the policy on the part of the insured. No attempt was made by the Appellant to examine the driver or to give a notice to produce the licence of the driver. Therefore, the Tribunal has rightly held that the Appellant did not discharge the burden of proving that there was a breach of the terms

and conditions of the policy by the insured.

8. This takes me to the quantum of compensation. The deceased was an employee of Vasantdada Spinning Mill. One Bajirao Jadhav was examined to produce the record from the office of the employer in which the deceased was working. He deposed that the deceased was an employee in the said Mill with effect from 1st August 1983 and he was getting a remuneration of Rs.2300/- per month. The learned Member of the Tribunal has accepted the evidence of the said Bajirao Jadhav as the certificate of income was produced and proved during the cross-examination of the said witness Jadhav. The Tribunal accepted that the income of the deceased at the time of his death was Rs.2248/-. The Tribunal has not made any allowance for future prospects on account of increase in the salary. The reason appears to be that the financial condition of the employer of the deceased was not sound.

9. The age of the deceased at the time of accident was 35 years. The Tribunal has applied the multiplier of 15 which is certainly on the higher side. In fact this is a case where the multiplier of 12 ought to have been applied.

10. By taking the monthly income at Rs.2248/-, the

Tribunal has deducted 1/3rd on account of the personal expenditure of the deceased and has rightly taken the multiplicand at Rs.18,000/-. Thus the compensation payable will come to Rs.2,16,000/- (Rs.18,000 x 12). The Tribunal has awarded a sum of Rs.25,000/- for loss of consortium and a sum of Rs.5000/- on account of funeral expenses. The said amounts awarded by the Tribunal are reasonable. Hence the total compensation payable will be Rs.2,46,000/- from which a sum of Rs.50,000/- paid on account of no fault liability will have to be deducted. Thus the total compensation amount payable will be Rs.1,96,000/-. The Tribunal has awarded interest at the rate of 12% per annum. The claim petition was filed in the year 1997. The claim petition was decided in the year 2005. In view of recent decisions of the Apex Court, the rate of interest ought to have been 9% per annum from the date of filing of the Application till the date of realisation.

11. Before parting with the Judgment a very serious feature of the case will have to be considered. On 23rd January 2006, this Court had granted ad-interim stay of execution of the impugned Judgment and award subject to condition of deposit of the decretal amount. Accordingly, a sum of Rs.4,62,245/- was deposited with the Tribunal by the Appellant. The writ of the order passed by this Court was received by the District Court,

Sangli on 26th February 2007. It appears that after the receipt of the writ, the Tribunal has permitted the original Claimants to withdraw the amount of compensation deposited by the Appellant. A sum of Rs.1,12,245/- was allowed to be withdrawn by the second Respondent by the Tribunal and the rest of the amount was invested in the name of the Claimants as per the direction given in the impugned Award. The Principal District Judge, Sangli has submitted a detailed report enclosing therewith reports submitted by the members of the staff of the Tribunal. In the said reports, it is stated that the decretal amount was deposited by the Appellant on 28th February 2006. On 6th March 2006, the Advocate for the Claimants applied for withdrawal of the amount. Initially the learned Member of the Tribunal passed an order "A.S. to report" on the application for withdrawal. The Assistant Superintendent, Cash and Finance, made an endorsement on 6th March 2006 about the deposit of the amount made by the Appellant. The Assistant Superintendent after making the aforesaid endorsement, as per usual practice allegedly followed by the said Court handed over the original Application to the Advocate for the Applicants with a direction to him to take necessary endorsement as regards the pendency of any Appeal and grant of stay by the Appellate Court. However, the Advocate for the Applicant did not obtain necessary endorsement and straightaway presented the

Application before the learned Member of the Tribunal. On the said Application the learned Member of the Tribunal passed an order of releasing the amounts of compensation deposited by the Appellant. The amounts of Rs.1,00,000/-,Rs.1,25,000/- and Rs.75,000/- were invested in Fixed deposit as per the award. On 14th March 2006, a sum of Rs.1,12,245/- was paid by the Tribunal to the second Respondent and a sum of Rs.50,000/- was paid to the third Respondent. On the basis of the notice issued by the learned Principal District Judge, the Claimants appeared before the learned Judge and stated that the cash amount withdrawn by them has already been spent for repayment of the loan raised by the Claimants and therefore, they expressed inability to redeposit the amount. A letter was addressed by the Advocate for the Claimants to the learned Principal District Judge. He has stated that he was not aware of the filing of the Appeal. He pointed out that an Application was not filed on record by the Appellant recording that the Appeal has been preferred and stay has been granted. The learned Principal District Judge after considering all the aspects of the matter has issued a direction that the practice of handing over the original application for withdrawal to the concerned Advocate for obtaining remarks has been stopped.

12. In this case, in view of the findings on merits recorded by me, there will be hardly any prejudice to the Appellant as the substantial amount out of the amount deposited by the Appellant has been deposited by the Tribunal in fixed deposits. Whenever an application is made by the Claimant/s for withdrawal of the compensation amount, the procedure which is following in all Civil Courts in throughout the State will have to be followed. When an application is made for withdrawal, apart from calling for report from the Assistant Superintendent, Cash and Finance regarding deposit of the amount, a report will have to be called for from the concerned officer as regards the pendency of the Appeal and order of stay to the decree or Award. The reports are normally submitted in this behalf by the members of the staff on perusal of the requisite register where noting of stay granted by the higher Court is always recorded. Without following the said procedure, in this case the compensation amount was permitted to be withdrawn. As stated earlier, the learned Principal District Judge has stated that he has issued directions in the aforesaid terms. The practice of handing over original application for withdrawal of amount to the concerned Advocate for obtaining the remark regarding stay is not at all a healthy practice and has to be stopped. The Application has to be forwarded by the staff of the Tribunal to the concerned Officer for

obtaining the remark. Unless there is a remark of the concerned officer to the effect that there is no stay granted by the higher Court or that the higher Court has permitted withdrawal of the amount, the withdrawal cannot be permitted. It will be necessary for the Registrar (Judicial-I) to bring this aspect in this Judgment to the notice of the Members of the Motor Accident Claims Tribunal in Maharashtra.

13. Hence the following order is passed:

(i) The Appeal is partly allowed. The Compensation amount payable will be Rs.2,46,000/- excluding the amount awarded by way of no fault liability. The compensation amount will carry interest at the rate of 9% per annum from 2nd May 1997 till payment of the amount.

(ii) The Tribunal has already deposited amounts of Rs.1,00,000/-, Rs.1,25,000/- and Rs.75,000/- in fixed deposits. As the amount of compensation awarded by the Tribunal has been reduced, the Appellant will be entitled to the refund of the excess amount deposited with the Tribunal. Considering the quantum of compensation fixed by this Court, it will not be necessary to pass any order regarding the return of the amount which

is withdrawn by the Claimants. However, if necessary, the Tribunal shall order premature encashment of the fixed deposits made in the amounts of Rs.1,25,000 and Rs.75,000 in the names of the second and third Respondent respectively and after encashing the fixed deposit, the Tribunal will pass necessary order of refund in favour of the Appellant of the excess amount deposited by it. After excess amount is refunded to the Appellant, the Tribunal will pass appropriate order regarding investment of the balance amount, if any, in the names of the second and third Respondent. The deposit made in the name of the first Respondent (a minor) shall not be disbursed.

(iii) The sum of Rs.25,000/- deposited by the Appellant in this Court shall be transferred to the concerned Tribunal. The Tribunal will refund the said amount of Rs.25,000/- to the Appellant along with the excess amount deposited by the Appellant.

(iv) First Appeal is disposed of in the above terms with no order as to costs.

(v) The Registrar (Judicial-I) will consider the

observations made in this Judgment and will take necessary steps.

(vi) Writ to be sent immediately.

Judge.